



FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE

POWER OF ATTORNEY

A power of attorney (POA) is a very powerful legal document that you should use cautiously. You may use it to allow anyone you specify (your "agent") to:

- ship, receive, register, use, and sell your car,
- ship and receive your household goods,
- cash checks; start, change, or stop allotments,
- take your child to the hospital and enroll your child in school,
- buy, sell, rent, manage, and mortgage real property,
- borrow money/create valid debts in your name that will be your responsibility,
- and much, much more.

Your POA gives your agent (or "attorney-in-fact") authority to make decisions and act for you. You may give a few powers, or you may give many powers. Most POAs last from a definite start time for a specific time-limited period (for example one year). You may issue a POA that lasts an indefinite period of time. Many businesses, however, seldom accept a POA that is more than one or two years old because of uncertainty that the agent is still authorized to act any longer.

Here are some Questions & Answers to help you decide if you need a POA:

Q. When should I use a power of attorney?

A. Most often, you may use a power of attorney when you cannot be present and you want someone to accomplish something for you. For example, you want your agent to sell your car while you are deployed. You also may want to have a power of attorney for certain emergency situations. Depending on the purpose—what you want your agent to do—and the length of your absence, you may wish to put certain limiting instructions in your power of attorney. You may use a *durable* power of attorney if you want it to continue in effect if you become disabled or incapacitated. If you do not have a durable power of attorney, your agent's authority to act for you ends upon your becoming disabled or incapacitated.

NOTE: third parties (e.g., banks, businesses) need not accept or acknowledge your power of attorney; it is totally within their discretion to do so. Some businesses and government agencies (e.g., Internal Revenue Service) require you use their form power of attorney. You should check with the business or agency where your agent will use your power of attorney to be sure it would be accepted.

Q. Whom should I name as my agent in my power of attorney?

A. Someone you trust. You may name your spouse, a relative, or a friend. The person you designate must be at least 18 years old. In addition, you should make sure the person can intelligently handle your affairs, and can carry out your wishes in case he or she needs to negotiate a price or persuade someone to even accept the power of attorney. Finally, the person should be trustworthy, mature, and capable of understanding the great responsibility that goes with having a power of attorney. Keep in mind that your agent will not bear the responsibility of their actions while acting under your power of attorney - you will. Their actions legally bind you. A power of attorney is, in a sense, a blank check.

Q. Which type power of attorney should I use?

A. The answer depends on why you need one and whether another arrangement may work instead. A **general** POA allows your agent to do almost everything you could do if you were present. A general POA has

enormous potential for abuse. If the person who holds your general POA cannot be trusted or turns against you when you are away, watch out! Your car could be sold or your bank account cleaned out when you return. Because of the dangers of a general power of attorney, you should limit its duration. When it expires, third parties cannot legally rely on it. This protects you from liability for your agent's acts after it ends. A ***special***, or limited POA is normally better than a general one because it authorizes your agent to do only a specified act, such as register (and not sell) your car, and ship, but not receive, your household goods. Also, because it is drawn for a specific purpose, it is often considered to be a more reliable measure of your actual intent and, therefore, is more likely to be accepted by those with whom your agent will be trying to do business. If a general POA is more than you need (or are willing to grant), but you still need to appoint another to act for you, consider a ***special*** POA.

Q. Will a power of attorney work for everything?

A. No, there are some actions that cannot be accomplished by using a POA because these actions are so personal in nature they cannot be delegated to another. For example, a marriage ceremony or the execution of a will cannot be done by a POA.

Q. If I become incapacitated, will my spouse be able to access my medical records?

A. A new federal law on medical privacy was implemented in 2003. The Health Insurance Portability and Accountability Act (HIPPA) was designed to protect health information. HIPPA requires health care providers and health plans to allow you access to your medical records. Any notices you receive from providers and plans must include information about how you can obtain copies of your medical records. In addition to the requirement from HIPPA, about half the states have laws that specifically allow patients or their designated representatives to access medical records. These laws do allow the facility to charge a reasonable fee for copying the records. In order to allow your spouse access to your medical records, you should compose a Power of Attorney for that purpose. In the POA, you can specifically state that your spouse should be granted access to your medical records, either beginning immediately or when you become disabled. Your spouse then stands in your shoes, and can make the request on your behalf. The request should be in writing.

Q. What if I gave my spouse a power of attorney and now we are separating or divorcing?

A. When you no longer desire your appointed attorney-in-fact to continue in that position, revoke your power of attorney. The best way to do that is to get the original back from your agent, but that might not be possible. You can also fill out a revocation form (see your Legal Assistance Office) and deliver it to your agent and all the creditors, banks, companies, and individuals that your agent has dealt with or is likely to deal with on your behalf. You might also have to publish it in the newspaper or file it in court (if the POA was filed in court initially). Check with Legal Assistance for your state law requirements.

Q. I may deploy or frequently travel. Should I prepare a power of attorney?

A. Possibly, but first ask yourself "Do I ***need*** a POA?" Some military members prepare a POA for deployment so that their spouse can bank, receive household goods shipments, register the car, and do other such things when the member is away. Many single-soldier parents and dual-military couples with children use a POA as part of their family care plans to set up short and long-term guardianships for their minor children. You may decide, however, you do not need a POA. If you and your spouse have a joint checking account, your pay is directly deposited into your joint account, and you are not planning on purchasing or selling any large jointly-titled items such as a car or a house, then you probably do not need a POA.

Bottom Line: If you need a POA, tailor a ***special*** POA to your specific needs, and ***never*** give a ***general*** POA when a ***special*** POA will accomplish the mission.

Q. Where can I learn more about a power of attorney?

A. Consult your installation Legal Assistance Office or check our Legal Services.

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